

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/24/2017 - 10/26/2017 Session)
Tuesday, October 24, 2017

Page 1 of 15
REVD 10/23/17

16-1164	Briefs	INDIVIDUALS WITH DISABILITIES EDUCATION ACT: Appeal from summary judgment reversing ALJ's determination that IEP was reasonably calculated to provide student with a free, appropriate public education.
N. P. v. Kevin Maxwell		
(Motz)		

16-6957	Briefs	CIVIL RIGHTS: Whether jury instruction erroneously raised deliberate indifference standard from "reckless" to "intentional."
Albert Anderson v. M. Kingsley		
(Miller)		

16-6278	Briefs	CIVIL RIGHTS: Propriety of dismissal of 42 U.S.C. section 1983 (2012) claim for violation of equal protection; other issues.
James Roudabush, Jr. v. F. Milano		
(Allen)		

17-6835	Briefs	IMMIGRATION: Whether ICE detention of noncitizen during pendency of withholding-only proceeding is pursuant to 8 USC 1226 or 8 USC 1231.
Jose Crespín v. Mary Evans		
(Ellis)		

PANEL I
Red Courtroom (Room 412)
9:30 a.m.

Tuesday, October 24, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/24/2017 - 10/26/2017 Session)
Tuesday, October 24, 2017

Page 2 of 15

16-4480	Briefs	CRIMINAL: Whether physician had Fourth Amendment standing to contest search of ex-patients' files; whether district court properly denied Franks hearing.
US v. William Crittenden		
(Blake)		

16-4537	Briefs	SENTENCING: Whether defendant's sentence is procedurally reasonable.
US v. Benjamin Blue		
(Beaty)		

16-7556	Briefs	CRIMINAL: Whether the South Carolina offense of involuntary manslaughter is a violent felony under the ACCA's force clause.
US v. Jarnaro Middleton		
(Duffy)		

16-1594	Briefs	IMMIGRATION: Whether substantial evidence supports the conclusion that family membership was not at least one central reason for past persecution.
Reynaldo Salgado-Sosa v. Jefferson Sessions III		

PANEL II
Butzner Courtroom 201
9:30 a.m.

Tuesday, October 24, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/24/2017 - 10/26/2017 Session)
Tuesday, October 24, 2017

Page 3 of 15

16-2267 [Briefs](#) FOREIGN SOVEREIGN IMMUNITIES ACT: Did district court have subject-matter and personal jurisdiction over
Avinesh Kumar v. Republic of Sudan claims against Sudan under the Act; other issues.
(Doumar)
Associations: 16-2269, 16-2271, 16-2272, 16-2273, 16-2275, 16-2276, 16-2280, 16-2281, 16-2282, 16-2283, 16-2284, 16-2285, 16-2286, 16-2287, 16-2288,
16-2289, 16-2290, 16-2365

16-4771 [Briefs](#) CRIMINAL: Whether Government's delay invoking untimeliness of appeal amounts to forfeiture of Government's
US v. Adrian Hyman right to move for dismissal on that basis; other issues.
(Biggs)

16-2116 [Briefs](#) ERISA: Multiple issues regarding standard of review, standing, damage award, and interpretation of plan
Greenbrier Hotel Corporation v. Unite Here documents.
Associations: 17-1720

16-2325 [Briefs](#) CONSTITUTIONAL: Whether district court erred in ruling that Baltimore City ordinance violates pregnancy center's
Greater Baltimore Center v. Mayor and City rights under First Amendment Free Speech Clause.
(Garbis)

PANEL III
Blue Courtroom (Room 339)
9:30 a.m.

Tuesday, October 24, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/24/2017 - 10/26/2017 Session)
Tuesday, October 24, 2017

Page 4 of 15

17-1118	Briefs	BANKING: Whether the National Bank Act and federal banking regulations preempt former W. Va Code section 46A-3-112(3).
Jeremy Powell v. The Huntington National (Johnston)		

16-1508	Briefs	CIVIL: Whether the district court correctly instructed jury regarding intervening or superseding negligence, including employer responsibility; whether jury verdict is inconsistent or irreconcilable; related issues.
Erik Phillips v. Pneumo Abex, LLC (Reidinger)		

16-1971	Briefs	BANKRUPTCY: Whether Chapter 13 debtor can avoid completely unsecured junior lien when no proof of claim has been filed.
Edwin Burkhart v. Nancy Spencer Grigsby (Messitte)		

PANEL IV
Gold Courtroom (Room 348)
9:30 a.m.

Tuesday, October 24, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/24/2017 - 10/26/2017 Session)
Tuesday, October 24, 2017

Page 5 of 15

16-6515	Briefs	POST-CONVICTION: Whether counsel was ineffective in failing to object to career offender enhancement.
US v. Jolon Carthorne, Sr. (Osteen)		
<hr/>		
16-1454	Briefs	EMPLOYMENT: Whether the district court erred in granting summary judgment to employer on employee's race discrimination and retaliation claims.
John Hightower v. Savannah River (Childs)		
<hr/>		
16-2225	Briefs	TITLE VII/ADEA: Whether district court erred in granting summary judgment on race and age discrimination and retaliation claims.
Michael Tillery v. Piedmont Airlines (Brinkema)		
<hr/>		
17-1041	Briefs	CONTRACT: Whether district court erred in refusing to enforce forum selection clause; in exercising jurisdiction over foreign sovereign; in granting summary judgment in favor of contractor.
BAE Systems Technology v. Republic of (Grimm)		
Associations: 17-1070		

PANEL V
Tweed Courtroom (Room 414-D)
9:30 a.m.

Tuesday, October 24, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/24/2017 - 10/26/2017 Session)
Wednesday, October 25, 2017

Page 6 of 15

17-6121 [Briefs](#) CIVIL RIGHTS: Whether defendant prison employees were deliberately indifferent to plaintiff inmate's health and safety.
Adib Eddie Ramez Makdessi v. Lt. Fields
(Conrad)

16-1972 [Briefs](#) COPYRIGHT LAW: Whether internet service provider may be contributorily negligent for copyright infringement by users; safe harbor defense; statutory damages.
BMG Rights Management (US) LLC v. Cox
(O'Grady)
Associations: 17-1352, 17-1353

16-4683 [Briefs](#) SENTENCING: Whether district court clearly erred in applying two-level enhancement for possession of a firearm, USSG section 2D1.1(b)(1).
US v. Donald Cantrell
(Bailey)

PANEL I
Red Courtroom (Room 412)
9:30 a.m.

Wednesday, October 25, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/24/2017 - 10/26/2017 Session)
Wednesday, October 25, 2017

Page 7 of 15

17-1378	Briefs	LABOR: Did district court have jurisdiction; did it err in finding dispute arbitrable; did it abuse its discretion in issuing preliminary injunctive relief
International Union, UMW v. CONSOL (Faber)		
<hr/>		
16-2331	Briefs	LABOR: Whether the district court abused its discretion, or otherwise erred, in denying injunctive relief sought by the Acting Regional Director of NLRB.
Lisa Henderson v. Bluefield Hospital Co., LLC (Faber)		
Associations: 16-2332		
<hr/>		
16-1773	Briefs	LONGSHORE: Whether Claimant's injury produced "disability" under 33 U.S.C. section 902(10) (2012), as required for entitlement to temporary total disability benefits.
Russell Moody v. Huntington Ingalls Inc.		

PANEL II
Butzner Courtroom 201
9:30 a.m.

Wednesday, October 25, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/24/2017 - 10/26/2017 Session)
Wednesday, October 25, 2017

Page 8 of 15

16-7596	Briefs	CIVIL RIGHTS: Whether district court erred in dismissing complaint that officials violated prisoner's constitutional rights by closing Rastafarian worship services.
Torrey F. Wilcox v. Betty Brown (Whitney)		

16-2007	Briefs	APA: Challenge to administration of the H-2B temporary worker program; other issues.
Pablo Gonzalez-Aviles v. Alexander Acosta (Motz)		
Associations: 16-2203		

16-1805	Briefs	FALSE CLAIMS ACT/ARRA: Whether district court erred in granting summary judgment on whistleblower claims focused on alleged wrongdoing by contractor of employer.
William O'Hara v. NIKA Technologies, Inc. (Grimm)		

PANEL III
Blue Courtroom (Room 339)
9:30 a.m.

Wednesday, October 25, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/24/2017 - 10/26/2017 Session)
Wednesday, October 25, 2017

Page 9 of 15

16-1932 [Briefs](#) CIVIL RIGHTS: Whether state officials were entitled to qualified immunity where they refused post-termination
Robert E. L. Supinger, Jr. v. Richard D. Holcomb hearing under Va. statute believing an alternative statutory process was available; other issues.
(Moon)
Associations: 16-1984

16-2408 [Briefs](#) LABOR: Whether district court properly granted summary judgment to defendant state agency in action under
U. S. EEOC v. Maryland Insurance Admin Equal Pay Act, 29 U.S.C. section 206(d) (2012).

PANEL IV
Gold Courtroom (Room 348)
8:30 a.m.

Wednesday, October 25, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/24/2017 - 10/26/2017 Session)
Wednesday, October 25, 2017

Page 10 of 15

16-6833	Briefs	CIVIL COMMITMENT: Whether federal limitations period applies to civil commitments under the Adam Walsh Act.
US v. Edgar Searcy (Flanagan)		

17-1034	Briefs	BANKRUPTCY: Did the court err in overruling trustee's objections and confirming debtor's modified plan?
Thomas Gorman v. Ricardo Cantu, Jr. (Hilton)		

16-4674	Briefs	CRIMINAL: Whether there was sufficient evidence of defendant's knowledge that means of identification belonged to another person to support conviction for aggravated identity theft.
US v. Terry Bowman (Blake)		

16-2185	Briefs	CIVIL: Propriety of district court's determination that facsimile transmission did not qualify as unsolicited advertisement under 47 U.S.C. section 227.
Carlton & Harris Chiropractic v. PDR (Chambers)		

PANEL V
Tweed Courtroom (Room 414-D)
9:30 a.m.

Wednesday, October 25, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/24/2017 - 10/26/2017 Session)
Thursday, October 26, 2017

Page 11 of 15

16-4594	Briefs	CRIMINAL: Propriety of district court's ruling on suppression motion; whether S.C. Code sections 44-53-370 and 44-53-445 are divisible.
US v. Bryan Marshall		
(Anderson)		

16-4358	Briefs	CRIMINAL: Whether district court erred in applying sentence enhancement for maintaining drug premises, denying reduction for being minor participant.
US v. Bolivar Carbajal		
(Beaty)		

16-2216	Briefs	ADEA: Whether back pay is a mandatory legal remedy under the Act; whether district court abused its discretion in denying all monetary relief.
EEOC v. Baltimore County		
(Bennett)		

17-1770	Briefs	CIVIL: Did district court err in holding that it lacked personal jurisdiction over Victoriabank and dissolving freeze order.
Receiver for Rex Ventures Grp v. Banca		
(Mullen)		

PANEL I
Red Courtroom (Room 412)
8:30 a.m.

Thursday, October 26, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/24/2017 - 10/26/2017 Session)
Thursday, October 26, 2017

Page 12 of 15

16-4795	Briefs	SENTENCING: Whether a South Carolina conviction for assault and battery with intent to kill qualifies as a violent felony under 18 U.S.C. section 924(e)(2)(B)(i).
US v. Deon Dinkins		
(Currie)		

16-4687	Briefs	CRIMINAL: Whether technology-assisted review of cell phone should be considered a border search or search incident to arrest; whether warrant was required; other issues.
US v. Hamza Kolsuz		
(Ellis)		

16-6871	Briefs	CRIMINAL: Whether federal court has ancillary jurisdiction to order expungement of criminal record after Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375 (1994).
US v. Ray Mettetal, Jr.		
(Moon)		

16-4639	Briefs	SENTENCING: Whether district court erred in denying an offense level reduction for a minor role in light of Guidelines Amendment 794.
US v. Juan Guerrero-Deleon		
(Childs)		

PANEL II
Butzner Courtroom 201
8:30 a.m.

Thursday, October 26, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/24/2017 - 10/26/2017 Session)
Thursday, October 26, 2017

Page 13 of 15

16-7358 Eric DePaola v. VDOC (Jones)	Briefs	CIVIL RIGHTS: Whether district court erred in granting summary judgment to defendants on inmate's claims arising out of his confinement in administrative segregation.
16-4521 US v. William Hunt (Motz)	Briefs	CRIMINAL: Whether Hobbs Act robbery is a crime of violence under Amendment 798 of the Sentencing Guidelines.
16-4663 US v. Geoffrey Thomas Gattis (Flanagan)	Briefs	CRIMINAL: Whether robbery, as enumerated in the Supplement to the 2015 U.S. Sentencing Guidelines Manual section 4B1.2(a), includes North Carolina common law robbery.
16-4729 US v. Ronald Miltier (Doumar)	Briefs	CRIMINAL: Whether jury instructions for 18 U.S.C. section 2252A(a)(2)(A) (2012) charges erroneously provided interstate commerce element based on movement of computer.

PANEL III
Blue Courtroom (Room 339)
8:30 a.m.

Thursday, October 26, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/24/2017 - 10/26/2017 Session)
Thursday, October 26, 2017

Page 14 of 15

16-1902	Briefs	CIVIL: Whether district court properly rejected media broker's claims against former employer for unpaid commissions.
John J. Cunney v. Patrick Communications		
(Bredar)		

17-4120	Briefs	CRIMINAL: Did district court err in holding that under W. Va statute unlawful wounding is not a crime of violence and therefore defendant is not a career offender.
US v. Donald Covington		
(Johnston)		

PANEL IV
Gold Courtroom (Room 348)
8:30 a.m.

Thursday, October 26, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/24/2017 - 10/26/2017 Session)
Thursday, October 26, 2017

Page 15 of 15

16-6136 [Briefs](#)
Justin Evans v. John Kuplinski
(Davis)
CIVIL: Whether district court erred or abused discretion in denying and dismissing 42 U.S.C. section 1983 claims of inmate committed to psychiatric hospital.

17-4299 [Briefs](#)
US v. Robert McLamb
(Smith)
CRIMINAL: Whether search of electronic devices of users who click through "Playpen" welcome page. conducted pursuant to NIT "Network Investigative Technique" warrant, violated Fourth Amendment or Rule 41.

16-4680 [Briefs](#)
US v. Jamal Antwan Lewis
(Harwell)
CRIMINAL: Whether South Carolina criminal domestic violence of a high and aggravated nature conviction is a violent felony under the Armed Career Criminal Act; other issues.

PANEL V
Tweed Courtroom (Room 414-D)
8:30 a.m.

Thursday, October 26, 2017